

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

TOWNSHIP OF TEANECK BOARD OF
EDUCATION,

Respondent-Public Employee Representative,

-and-

TEANECK TEACHERS ASSOCIATION,

Respondent-Public Employer,

DOCKET NO. CI-81-86

-and-

CHARLES A. SULLIVAN,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint with respect to an allegation in an unfair practice charge filed by an individual arising from the application of an agency shop agreement. The Director notes that under the Employer-Employee Relations Act, claims that a representation fee is being assessed partially for "members only" benefits are matters for the Board appointed by the Governor under N.J.S.A. 34:13A-5.6.

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Appearances:

For the Respondent-Public Employee Representative
Ruhlman and Butrym
(Cassel R. Ruhlman, Jr. of counsel)

For the Respondent-Public Employer
Greenwood and Sayovitz
(Sidney A. Sayovitz of counsel)

For the Charging Party
Charles A. Sullivan pro se

REFUSAL TO ISSUE COMPLAINT

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") by Charles A. Sullivan (the "Charging Party" or "Sullivan") on June 18, 1981, as amended July 29, 1981 against the Teaneck Board of Education (the "Board") and the Teaneck Teachers Association (the "TTA"). ^{1/}

^{1/} Pursuant to the recognition clause of a collective agreement, TTA is the exclusive representative of all certificated personnel, including the Charging Party, a teacher, employed by the Board.

The amended charge alleges that the Board and TTA violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., as amended (the "Act"), specifically and respectively N.J.S.A. 34:13A-5.4 (a) (1) and (b) (1), when, commencing on or about April 1, 1981, both respondents caused (and continue to cause) certain amounts of money to be deducted from Sullivan's paycheck as a representation fee despite their failure to comply with the procedures and limitations of the sections of the Act authorizing the payment of a representation fee. N.J.S.A. 34:13A-5.5 et seq. The amended charge contains four enumerated paragraphs, each of which sets forth factual and legal theories for finding certain violations.

The first paragraph alleges that the Board and TTA violated N.J.S.A. 34:13A-5.5(a) ^{2/} when they caused the deduction of a representation fee from Sullivan's paycheck without first entering into a written, signed agreement authorizing such deductions.

2/ This section provides:

(a) Notwithstanding any other provisions of law to the contrary, the majority representative and the public employer of public employees in an appropriate unit shall, where requested by the majority representative, negotiate concerning the subject of requiring the payment by all non-member employees in the unit to the majority representative of a representation fee in lieu of dues for services rendered by the majority representative. Where agreement is reached it shall be embodied in writing and signed by the authorized representative of the public employer and the majority representative.

The second paragraph alleges that the Board and TTA violated N.J.S.A. 34:13A-5.6 ^{3/} when they caused the deduction of a representation fee from Sullivan's paycheck prior to the majority representative's establishment of a demand and return system under which the precise amount of the fee could be questioned.

The third paragraph alleges that the Board and TTA violated N.J.S.A. 34:13A-5.5(a) when they caused the deduction of a representation fee in lieu of dues for services rendered by organizations which did and do not have majority representative status. The amended charge asserts that the representation fee deducted was calculated, in part, on the cost of services rendered by the Bergen County Education Association ("BCEA"), the New Jersey Education Association ("NJEA") and the National Education Association ("NEA"). The Charging Party claims that none of these organizations is the majority representative.

3/ This section provides, in pertinent part:

Where a negotiated agreement is reached, pursuant to section 2 of this act, the majority representative of public employees in an appropriate unit shall be entitled to a representation fee in lieu of dues by payroll deduction from the wages or salaries of the employees in such unit who are not members of a majority representative; provided, however, that membership in the majority representative is available to all employees in the unit on an equal basis and that the representation fee in lieu of dues shall be available only to a majority representative that has established and maintained a demand and return system which provides pro rata returns as described in Section 2(c). The demand and return system shall include a provision by which persons who pay a representation fee in lieu of dues may obtain review of the amount returned through full and fair proceedings placing the burden of proof on the majority representative. Such proceedings shall provide for an appeal to a board consisting of three members to be appointed by the Governor, by and with the advice and consent of the Senate....

The fourth paragraph asserts, in part, that the Board and TTA violated N.J.S.A. 34:13A-5.5(b) ^{4/} when they caused the deduction of a representation fee from Sullivan's paycheck which exceeded 85% of "... the regular membership dues, initiation fees and assessments charged by the majority representative to its own members..." because it was calculated, in part, on the basis of the membership dues charged by BCEA, NJEA, and NEA.

The fourth paragraph also alleges that the Board and the TTA violated N.J.S.A. 13A-5.7 ^{5/} when they caused the deduction of a representation fee from Sullivan's paycheck which improperly reflected the cost of certain "member only benefits" afforded by NJEA and NEA.

4/ This section provides:

b. The representation fee in lieu of dues shall be in an amount equivalent to the regular membership dues, initiation fees and assessments charged by the majority representative to its own members less the cost of benefits financed through the dues, fees and assessments and available to or benefitting only its members, but in no event shall such fee exceed 85% of the regular membership dues, fees and assessments.

5/ This section provides:

Any action engaged in by a public employer, its representatives or agents, or by an employee organization, its representatives or agents, which discriminates between non-members who pay the said representation fee and members with regard to the payment of such fee other than as allowed under this act, shall be treated as an unfair practice within the meaning of the subsection 1(a) or subsection 1(b) of this act.

By letter dated October 7, 1981, the Charging Party submitted a letter, with enclosures, in which he acknowledged that the fee amounts deducted from his 1980-81 salary had been refunded, but asserted that the Board and TTA have continued to violate the representation fee sections of the Act, specifically in the manner alleged in paragraphs 3 and 4 of the amended charge, by causing the deduction of improper amounts from his 1981-82 paychecks. The undersigned deems this letter as an additional amendment to the Charge.

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charge. ^{6/} The Commission has delegated its authority to issue complaints to the undersigned and has established a standard upon which an unfair practice complaint may be issued. This standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act. ^{7/}

^{6/} N.J.S.A. 34:13A-5.4(c) provides: "The Commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice...Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the Commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

^{7/} N.J.A.C. 19:14-2.1

The Commission's rules provide that the undersigned may decline to issue a complaint. ^{8/}

For the reasons stated below, the undersigned declines to issue a complaint with respect to those allegations concerning member-only benefits contained in the fourth paragraph of the amended charge.

N.J.S.A. 34:13A-5.5(c) provides, in pertinent part:

Any public employee who pays a representation fee in lieu of dues shall have the right to demand and receive from the majority representative, under proceedings established and maintained in accordance with section 3 of this act [the section requiring the establishment of a demand and return system and providing for an appeal to a three member Board, N.J.S.A. 34:13A-5.4, supra at n.4] a return of any part of that fee paid by him which represents the employee's additional pro rata share of expenditures by the majority representative that is either in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment or applied toward the cost of any other benefits available only to members of the majority representative.
(Emphasis supplied)

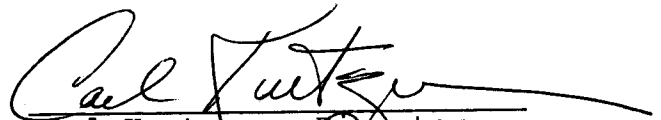
This section relegates an employee who believes his representation fee is improperly financing benefits available only to majority representative members to the demand and return system established pursuant to N.J.S.A. 34:13A-5.6. If the employee is not satisfied with the determination of what amount, if any, of his fee reflects the cost of member-only benefits, he may appeal to the three member board appointed by the Governor to review such claims. The Board is specifically empowered to resolve claims which question the

^{8/} N.J.A.C. 19:14-2.3

propriety of the amount of the fee collected.

Accordingly, the undersigned declines to issue a complaint with respect to those allegations concerning member-only benefits contained in the fourth paragraph of the amended charge. ^{9/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Carl Kurtzman, Director

DATED: November 17, 1981
Trenton, New Jersey

^{9/} Simultaneously herewith, under separate cover, the undersigned has issued a complaint with respect to the remaining allegations of the charge.